

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

GREGORY GALBERTH

Plaintiff,

vs.

**9:15-CV-1443
(TJM/TWD)**

J. BIELWIEZ, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Therèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that Defendants violated his civil rights while he was incarcerated in three New York prisons.

Magistrate Judge Dancks' Report-Recommendation, dkt. # 134, issued on December 20, 2018, recommends that Defendants' motion to dismiss for failure to prosecute be denied without prejudice. While Magistrate Judge Dancks concludes that Plaintiff's conduct in refusing to participate in depositions could justify dismissing the case against him, she finds that Plaintiff's *pro se* status justifies providing him with a final opportunity to participate in the litigation. She therefore recommends that Defendants' motion to dismiss and for alternative relief be denied in part and granted in part.

No party objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation.

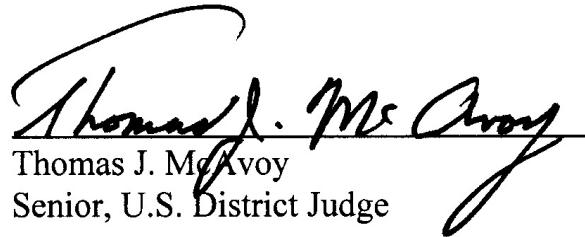
Accordingly,

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 134, is hereby **ACCEPTED** and **ADOPTED** and the Defendants' motion to dismiss and for alternative relief, dkt. # 103, is hereby **GRANTED** in part and **DENIED** in part, as follows:

1. The motion to dismiss for lack of prosecution is hereby **DENIED WITHOUT PREJUDICE**;
2. Defendants' request to extend discovery and dispositive motions deadlines for the limited purpose of conducting Plaintiff's deposition and to move for summary judgment is hereby **GRANTED**;
3. Defendants' request for an Order directing Plaintiff to appear for deposition is hereby **GRANTED**; and
4. Defendants' request that Plaintiff be ordered to pay the Office of the Attorney General \$155.60 for court reporter fees and \$253.63 for the hotel and transportation fees incurred as a result of Plaintiff's failure to appear for his deposition on May 3, 2018 and June 13, 2018 is hereby **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated: March 26, 2019


Thomas J. McAvoy
Senior, U.S. District Judge